

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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COURT
SAN JUAN, P.R.

1 UNITED STATES OF AMERICA,

2 Plaintiff,

3 v.

CIVIL NO. 96-2451 (RLA)

4 JOSE CALDERON, et al.,

5 Defendants.
6

7
8 ORDER IN THE MATTER OF DEFENDANTS' REQUEST
9 FOR TERMINATION OF CONSENT DECREE

10 Defendants have moved the court to terminate the Consent Decree
11 entered into between them and the UNITED STATES OF AMERICA in these
12 proceedings.¹ The court having reviewed the motions filed by the
13 parties as well as having considered their arguments² hereby finds as
14 follows.

15 **Procedural Background**

16 The UNITED STATES instituted these proceedings seeking equitable
17 relief as well as payment of penalties based on alleged violations to
18 the Federal Water Pollution Control Act. Specifically, the complaint
19 claims defendants discharged dredge and fill material into wetlands
20 of the United States located in their property.
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24 ¹ See Partial Consent Decree, filed on December 21, 1999
(docket No. 130).

25 ² See Minutes of Status Conference Held on April 5, 2001
26 (docket No. 137).

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After an extended and contentious period defendants obtained a Nationwide Permit No. 32 to legalize the violations charged in the complaint and reached a settlement agreement via a Consent Decree in December 1999. The Decree provided that defendants (1) would pay a civil penalty and (2) agreed to the issuance of a permanent injunction prohibiting them "from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations." Partial Consent Decree ¶ 11

Thereafter, defendants filed a motion advising that they had legalized the conditions charged in the complaint as well as satisfied the penalty agreed upon and therefore, the Consent Decree should be terminated.

Consent Decree

Apart from payment of the penalty, the Consent Decree provides for a permanent injunction which compels the defendants to submit for approval by the U.S. CORPS OF ENGINEERS any future dredging and filling of material into wetlands located within their property. This obligation extends to the settling defendants, their agents and successors. Partial Consent Decree ¶6 Further, defendants bound themselves to notify the United States in writing prior to any change of ownership as well as to provide copy of the Consent Decree to their successors in interest. Partial Consent Decree ¶8

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1 In sum, defendants' obligations under the permanent injunction
2 portion of the Consent Decree subsist while they hold title to the
3 property in question. These continuing obligations will cease upon
4 defendants transferring title to the property provided, of course,
5 that prior notice of the transfer is given to the United States and
6 the new owners are apprised of the terms of the Consent Decree.
7

8 Conclusion

9 Based on the foregoing, while we concede that defendants have
10 complied with certain obligations assumed as part of their agreement,
11 other equitable duties which are of a continuing nature subsist which
12 do not yet allow for the termination of the Consent Decree.

13 Accordingly, defendants' Motion Requesting Termination of
14 Consent Decree, filed on February 9, 2001 (docket No. 131) is **DENIED**.³

15 IT IS SO ORDERED.

16 In San Juan, Puerto Rico, this 2 day of July, 2001.

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19 RAYMOND L. ACOSTA
20 United States District Judge
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24 ³ See United States's Opposition... filed on February 20, 2001
25 (docket No. 132) and defendants' Reply... filed on March 8, 2001
26 (docket No. 133). See also Minutes of Status Conference Held on
April 5, 2001 (docket No. 137).